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August 17, 1998

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

RE: Ex Parte - Petition for Reconsideration of SBC Communications Inc.,  
In the Matter of Tariffs Implementing Access Charge Reform,  
CC Docket No. 97-250 (filed July 1, 1998).

Dear Ms. Salas:

SBC Communications, Inc. (SBC), on behalf of Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company (collectively, the SBC Companies), hereby files this ex parte letter regarding the August 4, 1998 ex parte letter filed by AT&T Corp. (AT&T) in the above designated matter. At the outset, SBC objects to AT&T's "opposition" because it was not timely filed. Under Section 1.106(g), "Oppositions to a petition for reconsideration shall be filed within ten days after the petition is filed...."<sup>1</sup> AT&T's ex parte letter does not deny that it is an "opposition" to SBC's petition and in fact, states that it is the "AT&T Opposition to Petition for Reconsideration...." As SBC is unaware of any order allowing AT&T additional time in which to file its "opposition", AT&T's opposition is untimely and should be stricken.<sup>2</sup>

Notwithstanding SBC's objection, SBC notes that all the points raised by AT&T are already fully addressed in the previous pleadings, except for one. That one point is AT&T's attempt to explain the Commission's staff's failure to obtain OMB approval of the information collection requirement on the non-primary line issue. Due to AT&T's mischaracterization of the facts and the Commission's orders in this proceeding, SBC finds it necessary to respond.

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<sup>1</sup> 47 CFR Section 1.106(g).

<sup>2</sup> The requirement to file an opposition in a timely manner is important as it prevents parties, like AT&T here, from gaming the pleading cycle. AT&T waited until SBC filed its reply before choosing to oppose the Petition, thereby circumventing the Commission's Rules. AT&T should not be allowed to see all of the pleadings in the matter before filing its opposition.

AT&T first attempts to claim that the June 1 MO&O<sup>3</sup> does not impose an information collection requirement on Pacific Bell. On the contrary, prior to the June 1 MO&O, the price cap local exchange carriers (LECs) were not required to implement any particular Commission definition of non-primary lines. In the June 1 MO&O, however, the price cap LECs, and Pacific Bell in particular, were required to utilize newly-revealed Commission criteria in defining non-primary lines for purposes of rate calculation in the 1998 Annual Access Tariff filings, and for refund purposes. Thus, a new "information collection" was required. This requirement cannot be adopted retroactively.

Apparently realizing this, in footnote number five AT&T attempts to make the fallacious argument that the information collection requirement actually came from the original Access Reform Order or the Designation Order.

Neither the Access Reform Order nor the Designation Order contained a non-primary line definition the LECs were required to adopt. AT&T claims "the Access Reform Order placed Pacific Bell on notice that it would have to develop and apply a reasonable definition of non-primary lines for its 1998 Access Reform Tariff filings. Access Reform Order, paragraph 83." This blatant mischaracterization of paragraph 83 must not be countenanced. Paragraph 83 clearly states that "in a further notice of proposed rulemaking in the universal service proceeding, [the FCC] will...release an order defining 'primary' and 'non-primary' residential lines by the end of the year." While AT&T's ex parte letter claims that LECs were on notice that they would have to "develop" a reasonable definition of non-primary lines, the paragraph cited by AT&T clearly states that LECs would not have to develop such a definition. Instead, the Commission committed itself to developing that definition. Thus, since the Access Reform Order stated nothing about requiring LECs to develop their own definition, the OMB could not have approved an "information collection" requirement that required LECs to develop their own definition.

Likewise, AT&T's claim that the Designation Order provided this authority is also off the mark. The Designation Order, released on January 28, 1998, cannot provide authority to order the LECs to apply their own definitions in the December 1997 Tariff Filings. Such a claim is clearly void on retroactivity grounds.

The Commission should not be tempted by AT&T to ratify the mistake made by Commission staff in this proceeding. Clearly, had the direction of the Commission staff to the LECs to develop and apply their own definitions for the December 1997 Tariff filings been placed in writing, and had that writing been subject to OMB review, and had it obtained subsequent OMB approval, SBC would have no claim here. However, Commission staff's failure to obtain OMB approval for its modification of the Access Reform Order negates any refund liability of the June 1 MO&O.

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<sup>3</sup> Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, Memorandum Opinion and Order (FCC 98-106) (rel. June 1, 1998) (June 1 MO&O).

Indeed, even if the direction given in the conference call had been ordered in writing, it is unlikely that OMB approval would have been granted. The OMB is to evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality utility and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondent.<sup>4</sup>

Had the Commission staff submitted the requirement (that the LECs develop their own definitions) to OMB for review, SBC could have responded that the proposed collection of information would not have been necessary for the proper performance of the functions of the Commission, since the Commission had already obligated itself to develop its own definition. SBC could also have stated that the quality, utility and clarity of the information collected would have been enhanced and that the burden on the LECs and the Commission would have been minimized had the Commission merely completed the task it set out for itself in the Access Reform Order, which was to develop its own definition of non-primary lines.

Clearly, the question was never properly placed before the OMB as to whether LECs should be required to develop and apply their own definitions of non-primary lines in the December 1997 Tariff filings. Any arguments to the contrary must fail because not only was this requirement not placed before the OMB, it was not placed in writing at all.<sup>5</sup> Therefore, at a minimum, the Commission must correct its mistaken assumption that its verbal direction to the LECs to develop and apply their own definitions of non-primary lines had been given OMB approval, and reverse the June 1 MO&O.

As noted previously, the Designation Order could not legally require Pacific Bell to undertake an information collection in December 1997, since it was not itself issued until January 28, 1998. Further, the Designation Order, contrary to AT&T, does not require LECs, including Pacific Bell, to develop a reasonable definition of non-primary lines. Nothing in the paragraph cited by AT&T requires each LEC to "develop" a reasonable definition of non-primary lines. Indeed, the word "develop" does not even appear in the paragraphs cited by AT&T. Thus, even today, no Commission order that requires the LECs to develop their own definitions of non-primary lines (and to gather the supporting material to implement such a definition) has received OMB approval. Since no such OMB - approved order exists, the LECs should not, even today, be required to implement their own definitions. The remedy for this misstep is simple: it must start with reversing the June 1 MO&O to the extent that it penalized Pacific Bell for failing to abide with the non-OMB-compliant information collection, and the Commission should issue its decision in CC Docket No. 97-181 as soon as possible.<sup>6</sup> The Commission should not

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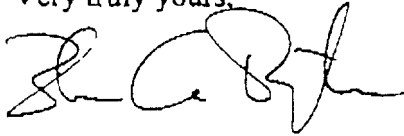
<sup>4</sup> See, Part 1320 of C.F.R. Title 5.

<sup>5</sup> SBC Petition at fn 5.

<sup>6</sup> In the meantime, the Commission should grant SBC's pending motion to extend the date for filing the refund report required by the June 1 MO&O, notwithstanding AT&T's opposition to SBC's motion, filed by letter on August 10, 1998.

allow such an important matter to be solely based upon the verbal directions given in a conference call with the Commission staff, which will, of course, change once the Commission finally issues its definition of non-primary lines.

Very truly yours,

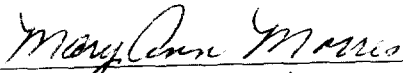
A handwritten signature in black ink, appearing to read 'Tom A. Pajda', written in a cursive style.

Thomas A. Pajda

cc: All parties of record.

**Certificate of Service**

I, Mary Ann Morris, hereby certify that the foregoing  
“Refund Plans of Southwestern Bell Telephone Company and Pacific Bell,”  
in CC Docket Number 97-250 has been served on August 31, 1998, to  
the Parties of Record.

  
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Mary Ann Morris

August 31, 1998

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